

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Legal Division

San Francisco, California

Date: December 18, 2003

Resolution No. L-309

**RESOLUTION**

**RESOLUTION AUTHORIZING DISCLOSURE OF RECORDS  
REGARDING THE COMMISSION'S INVESTIGATION OF THE  
ELECTROCUTION DEATH OF JOSE ANTONIO CORONA  
(INCIDENT REPORT: EIR 200111201-01) PURSUANT TO  
SUBPOENAS BY THE LAW OFFICES OF WAYNE McCLEAN AND  
BY SOUTHERN CALIFORNIA EDISON COMPANY.**

**BACKGROUND**

A draft resolution (L-309) by the Legal Division authorizing disclosure of the Commission's Consumer Protection and Safety Division records regarding the investigation of the electrocution of Jose Antonio Corona (Incident Report No. EIR 200111201-01) is scheduled for consideration on the December 18, 2003 Commission meeting agenda. This item is a late addition to the agenda, and requires a Commission vote to add it to the agenda in accordance with Rule 79 of the Rules of Practice and Procedure.

On December 10, 2003, the Commission's Legal Division received a subpoena served on Steven Intably of the Commission's Consumer Protection and Safety Division by the Law Offices of Wayne McClean, seeking records concerning the death of Mr. Corona on December 3, 2001 in Santa Monica, California, the testimony of Mr. Intably at a deposition scheduled for December 19, 2003, and the testimony of the custodian of records for the Commission's Consumer Protection and Safety Division. The Law Offices of Wayne McClean represent the plaintiffs in litigation concerning Mr. Corona's death (Lilia Mercado, individually and as guardian ad litem for Ellie Corona, et al.).

On December 15, 2003, the Commission's Legal Division received a subpoena from Southern California Edison Company, seeking records concerning the Commission's investigation of the death of Mr. Corona, and the appearance of Mr. Intably on February 4, 2004 at trial in the litigation concerning his death.

**DISCUSSION:**

In response to a subpoena for records, the party subpoenaed must generally produce the records unless disclosure is subject to a statutory prohibition or privilege against disclosure. (Evidence Code § 911.) Public Records Act (Government Code § 6250 et seq.) exemptions have no impact on discovery. (Government Code § 6260.)

There is no statutory prohibition against the disclosure of records of completed safety investigations in response to a subpoena, although certain records within an investigation file may be subject to specific privileges against disclosure. The subpoenaed investigation file does not include documents subject to the Commission's lawyer-client, attorney work product, or similar privilege regarding Commission deliberations concerning the investigation.

Evidence Code § 1040 provides public agencies with a privilege to refrain from disclosing official information, defined as information acquired in confidence by a public employee during the course of his or her duty and not open, or officially disclosed, to the public before the privilege is asserted, in two situations: 1) where disclosure is prohibited by an act of Congress or a California statute (§ 1040 (b)(1)); or 2) where disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice (§ 1040 (b)(2)).

Since there is no statutory prohibition against the Commission's disclosure of investigation records to the parties to litigation related to the death of Mr. Corona, the absolute official information privilege in Evidence Code § 1040 (b)(1) does not apply. As we have noted in numerous prior decisions regarding requests for records of accident investigations, the interests of justice favor disclosure of most records concerning completed Commission investigations of accidents involving utility facilities and/or operations. There is nothing in the investigation records that would, if disclosed to parties engaged in litigation concerning the death of Mr. Corona, interfere with the Commission's successful completion of the investigation, with the successful completion of a related investigation, or with the safety of individuals involved in the investigation or any related investigation. The records are sought by an attorney representing the plaintiffs in this litigation, as well as by a defendant, and the disclosure of the records in this context does not appear to raise significant privacy concerns. Thus, the conditional official information privilege in Evidence Code § 1040 (b)(2) does not apply.

Therefore, we exercise our discretion under Public Utilities Code § 583 to authorize the disclosure of records received from utility companies during the course of the investigation of the death of Jose Antonio Corona and our right to disclose other Commission records concerning this investigation.

The Draft Resolution of the Legal Division in this matter was mailed and sent to the parties of interest on December 16, 2003. Because of the need for immediate action by

the Commission in order to authorize disclosure by the December 19, 2003 date specified in the subpoena received from the Law Offices of Wayne McClean, the Commission waived the standard period for notice and comment. Rule 77.7 (f)(7) authorizes reduction or waiver of the period for public review and comment regarding draft decisions authorizing disclosure of document in the Commission's possession when such disclosure is pursuant to a subpoena.

As required by Government Code § 11125.3(a)(2) and Rule 79 of the Commission's Rules of Practice and Procedure, two thirds of the Commissioners voted to have this item added to the agenda for the Commission meeting scheduled for December 18, 2003.

### **FINDINGS OF FACT**

1. The information in the subpoenaed records is relevant to litigation concerning the death of Jose Antonio Corona.
2. The Commission's records may be essential for the effective resolution of litigation related to the death of Jose Antonio Corona.
3. The public interest favors disclosure of the subpoenaed records concerning the Commission's investigation of the death of Juan Antonio Corona.
4. Public necessity requires reduction or waiver of the 30-day period for public review and comment, since compliance with the subpoena served by Frank Luckenbacher of the Law Offices of Wayne McClean requires disclosure of records on December 19, 2003, prior to the date by which the Commission could normally act on the Department of Justice request for authorization to disclose that information.
5. An unforeseen emergency situation as defined by Rule 81 of the Commission's Rules of Practice and Procedure exists, since the subpoena for disclosure of the subpoenaed records concerning the Commission's investigation of the death of Jose Antonio Corona requires action by the Commission more quickly than would be permitted if advance publication were made on the regular meeting agenda. Time is of the essence, there is a deadline for Commission action imposed by a subpoena, and the need to authorize disclosure prior to December 19, 2003 is an unusual matter that cannot be disposed of by normal procedures if the duties of the Commission are to be fulfilled.

6. As required by Government Code § 11125.3(a)(2) and Rule 79 of the Commission's Rules of Practice and Procedure, two thirds of the Commissioners voted to have this item added to the agenda for the Commission meeting scheduled for December 18, 2003.

### **CONCLUSIONS OF LAW**

1. The subpoenaed records are public records as defined by the California Public Records Act (Government Code § 6250 et seq.).
2. The general policy of the California Public Records Act and discovery laws favor disclosure of records.
3. Justification for withholding a public record in response to a subpoena or other discovery procedure must be based upon a statutory prohibition or privilege against disclosure.
4. The Commission should exercise its discretion under Public Utilities Code § 583 to authorize disclosure of records concerning the Commission's investigation of the death of Jose Antonio Corona on December 3, 2001.
5. Public Utilities Code § 583 does not limit the Commission's disclosure of records.
6. Rule 77.7 (f)(7) authorizes reduction or waiver of the period for public review and comment regarding draft decisions authorizing disclosure of document in the Commission's possession when such disclosure is pursuant to a subpoena.

### **ORDER**

1. The request for authorization to disclose confidential Commission records concerning Powersource Corporation in litigation alleging investor fraud and/or misrepresentation by Powersource Corporation is granted.
2. The effective date of this order is today.

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I certify that this Resolution was adopted by the Public Utilities Commission during its regular meeting of December 18, 2003 the following Commissioners approved it:

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WILLIAM AHERN  
Executive Director

MICHAEL R. PEEVEY  
President  
CARL W. WOOD  
LORETTA M. LYNCH  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners